

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7-8 RETURNS AND
COLLECTIONS**

TABLE OF CONTENTS

560-7-8-.33 Payment and Reporting of Withholding Tax.

560-7-8-.33 Payment and Reporting of Withholding Tax.

(1) **Purpose.** The purpose of this regulation is to provide guidance concerning the payment and reporting of withholding tax required under O.C.G.A. §§ 48-2-32, 48-7-101 and 48-7-103 and the withholding penalties imposed by subsection (c) of O.C.G.A. §48-7-126.

(2) Definitions.

(a) "Annual payer" means an employer who withholds or is required to withhold \$800.00 or less in the aggregate for the lookback period.

(b) "Business day" means every day except Saturday, Sunday, or any holiday observed by the Federal Reserve Bank or the State of Georgia.

(c) "EFT" means the payment by electronic funds transfer as provided and required by Rule 560-3-2-.26.

(d) "Lookback period" means the twelve month period ending June 30th of the preceding calendar year. For example, the lookback period for calendar year 2004 is the period from July 1, 2002 through June 30, 2003.

(e) "Monthly payer" means an employer who withholds or is required to withhold \$50,000 or less in the aggregate for the lookback period and who is not an annual payer or a quarterly payer.

(f) "Payday" means the date on the employee's check or the first day the employee is able to tender the check for cash or other consideration, whichever is earlier.

(g) "Quarterly payer" means an employer who withholds or is required to withhold \$200.00 or less per month during the lookback period and who is not an annual payer.

(h) "Semi-weekly payer" means an employer who withholds or is required to withhold more than \$50,000 in the aggregate during the lookback period.

(i) "Withholding tax" means the tax withheld or required to be withheld from an employee's wages pursuant to O.C.G.A. § 48-7-101.

(3) Payment of Withholding Tax.

(a) Determination of Taxpayer Status. An employer will be deemed a semi-weekly, monthly, quarterly, or annual payer based upon an annual calculation of the employer's aggregate amount of withholding tax reported for the lookback period.

1. In determining the withholding tax amount for the lookback period, the Department shall determine the total amount of withholding tax liabilities reported or required to be reported per the taxpayer's withholding tax quarterly returns (Forms G-7) for the four quarters constituting the lookback period.

2. Because an employer may have multiple Georgia withholding tax identification numbers, an employer must include all withholding tax liabilities incurred under the same federal employer identification number (FEIN) when calculating its aggregate amount of withholding tax liabilities. For example, a business may have five locations and each location remits and reports withholding tax under a different state withholding tax number yet all locations operate under the same FEIN. The calculation of the withholding tax for the lookback period must include the withholding tax of all five business locations.

3. An employer who does not possess a withholding tax history in Georgia will be required to file on a monthly basis until the employer has established a withholding tax history provided that the one-day rule stated in subparagraph (3)(g) of this regulation is not satisfied.

4. In determining the total amount of withholding tax for each quarter in the lookback period, the Department will not include adjustments made on a corrected Form G-7 quarterly return filed after the return's due date. However, adjustments made on line 2 of Form G-7 filed by the return's due date will be taken into consideration.

(b) Semi-weekly payer

1. Unless a payer falls under subparagraph (3)(g) of this regulation, a semi-weekly payer for a calendar year must remit

withholding tax via EFT on either the Wednesday or Friday following the payday as discussed below.

(i) For paydays occurring on a Wednesday, Thursday, or Friday the withholding tax is required to be remitted via EFT on or before the following Wednesday. If the following Wednesday is not a business day, the tax must be remitted on or before the next business day thereafter.

(ii) For paydays occurring on a Saturday, Sunday, Monday, or Tuesday the withholding tax is required to be remitted via EFT on or before the following Friday. If the following Friday is not a business day, the tax must be remitted on or before the next business day thereafter.

2. All semi-weekly payers must remit withholding tax via EFT. See O.C.G.A. § 48-2-32 and Rule 560-3-2-.26 for additional information and requirements.

3. Payroll checks issued between scheduled paydays will be deemed to have been issued for the next scheduled payday. For example, a company normally pays its employees on the 15th and last day of the month. However, an employee is issued a supplemental check on the 6th of the month due to a miscalculation of his earnings. For withholding tax purposes, the supplemental check is deemed to have been issued on the 15th. The related withholding tax from the supplemental check shall be sent via EFT along with the withholding tax related to the payday scheduled for the 15th of the month.

4. Employers with two or more payroll periods

(i) An employer with two or more payroll periods in which the paydays fall on different dates shall remit the related withholding

tax for each payday on the respective payment due dates pursuant to subparagraph (3)(b)1. of this regulation.

(ii) Example. An employer pays its hourly employees every Friday and its salaried employees on the 15th and last day of the month.

(I) April 15th falls on a Friday; therefore, the withholding tax for the salaried employees will be remitted the following Wednesday, April 20th along with the withholding tax related to the hourly employees. In this case, the employer has a single remittance obligation for both paydays.

(II) April 15th falls on a Tuesday; therefore, the withholding tax for the salaried employees will be remitted the following Friday, April 18th. The withholding tax related to the hourly employees' Friday, April 11th payday will be remitted the following Wednesday, April 16th. In this case, the employer has two remittance obligations for two separate paydays.

(c) Monthly payer. An employer that is determined to be a monthly payer must remit withholding tax with respect to payments made during a calendar month on or before the 15th day of the following month.

(d) Quarterly payer. An employer that is determined to be a quarterly payer must remit withholding tax with respect to payments made during the calendar quarter on or before the last day of the month following the end of the calendar quarter.

(e) Annual payer. An employer that is determined to be an annual payer must remit withholding tax with respect to payments made during the calendar year on or before the last day of January of the following year in which the tax was required to be withheld.

(f) Monthly, quarterly, and annual payers shall submit their payments via EFT if required to do so by regulation 560-7-3-.26.

(g) One-Day Rule

1. Notwithstanding subparagraphs (b) through (f) of this paragraph, withholding tax totaling more than \$100,000 for the payday must be remitted via EFT by the next business day after the payday. For example, an employer is required to withhold \$120,000 in tax related to the payroll checks dated Monday, May 15th. Therefore, the employer must remit the withheld tax to the Department via EFT on Tuesday, May 16th.

2. Any employer who triggers the one-day rule immediately becomes a semi-weekly payer and is subject to the payment rules under subparagraph (3)(b) of this regulation for the remainder of the calendar year and the entire following calendar year.

(4) Reporting of Withholding Tax.

(a) Semi-weekly Payer

1. Every employer who qualifies as a semi-weekly payer shall file a "G-7/SchB Quarterly Return for Semi-Weekly Payer" on or before the last day of the month following the end of the calendar quarter in which the withholding tax was required.

2. The return shall reflect the withholding tax liability for the calendar quarter less credit for any withholding tax payments made pursuant to subparagraph (3)(b) of this regulation during the calendar quarter. Any outstanding withholding tax reflected on the return shall be remitted via EFT on or before the due date of the

return. Such amount shall be subject to the penalties provided in paragraph (6) as well as interest.

(b) Monthly Payers

1. Every employer who qualifies as a monthly payer shall file a "G-7 Quarterly Return for Monthly Payer" on or before the last day of the month following the end of the calendar quarter in which the withholding tax was required.

2. The return shall be accompanied by payment of the amount of any tax due for such calendar quarter less credit for any withholding tax payments required under subparagraph (3)(c) of this regulation during the calendar quarter. Such amount shall be subject to the penalties provided in paragraph (6) as well as interest.

(c) Quarterly Payers

1. Every employer who qualifies as a quarterly payer shall file a "G-7 Quarterly Return for Quarterly Payer" on or before the last day of the month following the end of the calendar quarter in which the withholding tax was required.

2. The return shall be accompanied by payment of the amount of tax due for such calendar quarter less credit for any withholding tax payments made under subparagraph (3)(d) of this regulation during the calendar quarter.

(d) Annual Payers

1. Every employer who qualifies as an annual payer shall file the fourth quarter "G-7 Quarterly Return for Quarterly Payer" on or

before January 31st of the following year in which the withholding was required.

2. The return shall be accompanied by payment of the amount of tax due for the year less credit for any withholding tax payments made under subparagraph (3)(e) of this regulation during the calendar year.

(e) Withholding Tax Statements

1. On or before February 28th of each calendar year, an employer or other withholding taxpayer must file with the Department copies of the previous year's withholding tax statements.

2. The Form G-1003 "Income Statement Return" must accompany the withholding tax statements.

3. Every employer required by the United States Social Security Administration or the Internal Revenue Service to submit withholding tax statements electronically shall similarly submit the Form G-1003 "Income Statement Return" and all associated withholding tax statements electronically to the Department. Additionally, taxpayers that remit withholding tax payments by electronic funds transfer, whether on a mandatory or voluntary basis, must file the Form G-1003 "Income Statement Return" and all associated withholding tax statements electronically.

4. Withholding tax statements include Forms 1099, W-2, G-2-A, etc. Forms 1099 are only required to be submitted if Georgia income tax is withheld.

(f) Termination of business or change in business status.

1. An employer must submit Georgia Form G-5B upon termination of the business or change in business status relating to ownership, address, entity structure, or any other significant change relating to withholding tax responsibilities.

2. An employer is required to file its final withholding tax form and pay all withholding tax due by the earlier of the due date or 30 days after the close of the business or change in business entity or ownership.

3. Copies of the withholding tax statements must be filed along with the Form G-1003 "Income Statement Return" within 30 days after the close of the business or change in business entity or ownership.

(5) Certification of Software Vendors. At such time that the Department starts its certification program, the electronic filing of withholding returns and withholding tax statements must be completed by utilizing a software vendor that is approved by the Department.

(6) Withholding Penalties. The withholding penalties imposed by subsection (c) of O.C.G.A. §48-7-126 shall be applied as follows (see subparagraph (6)(e) for examples):

(a) The addition of the \$25 late penalty assessed on a withholding period may only occur once per quarter. Such \$25 penalty shall be added to the first instance of either the late filing penalty or the late payment penalty.

(b) Five (5) percent late filing penalty will be assessed starting on the first business day after the due date of the return, and then five (5) percent will be assessed on the first day of each month thereafter. Any payments or credits as well as amounts on the

adjustment lines on the Forms G-7 will for purposes of the late filing penalty calculation be ignored; this will be calculated using the tax withheld before application of any payments or credits and any adjustments listed on the Forms G-7.

(c) For all but quarterly and annual payers, late payment penalty will be assessed based on five (5) percent of the separate months the tax is due for the period of time prior to the return due date. Thereafter, it will be assessed at five (5) percent of the aggregate of the unpaid balance on the 16th of the month. For quarterly and annual payers it will be assessed at five (5) percent of the unpaid balance on the 1st of each month after the return due date.

(d) If at any time the amount of the late filing penalty plus the late payment penalty charged would exceed \$25 plus twenty-five (25) percent of the total tax due for the period, the amount necessary to reach this threshold will be assessed and no further late payment penalty or late filing penalty will be assessed. Any payments or credits as well as amounts on the adjustment lines on the Forms G-7 will for purposes of this threshold be ignored; this will be calculated using the tax withheld before application of any payments or credits and any adjustments listed on the Forms G-7.

(e) Examples:

1. Example 1:

Monthly Payer Owes:

\$5,000	January
\$6,000	February
\$7,000	March

Filing Due: 4/30/2009

Returns and Collections

Chapter 560-7-8

Actual Filing: 5/10/2009

Pays in Full: 5/10/2009

Late Payment Penalties:

April 16th, 2009:

$\$25 + (\$5,000 * 15\%) = \$775$

$(\$6,000 * 10\%) = \600

$(\$7,000 * 5\%) = \350

Late Filing Penalty:

May 1st, 2009:

$(\$18,000 * 5\%) = \900

Total Penalty: \$2,625

2. Example 2.

Monthly Payer Owes:

\$50,000 January

\$75,000 February

\$75,000 March

Pays in full on time.

Filing Due: 4/30/2009

Actual Filing: 6/15/2009

Late Payment Penalties:

None.

Late Filing Penalty:

May 1st, 2009

$$\$25 + (\$200,000 * 5\%) = \$10,025$$

June 1st, 2009

$$(\$200,000 * 5\%) = \$10,000$$

Total Penalty: \$20,025

3. Example 3.

Monthly Payer Owes:

\$50,000	January
\$75,000	February
\$75,000	March

Pays

\$100,000	February 20th
\$50,000	March 20th

Filing Due: 4/30/2009

Actual Filing: 7/15/2009

Late Payment Penalties prior to Filing Due Date:

Feb 16th, 2009:

$$\$25 + 5\% \text{ of } \$50,000 \text{ from January} = \$2,525$$

Feb 20th payment of \$100,000 pays the \$50,000 January amount due and \$50,000 of February amount due which leaves \$25,000 owed from February.

Mar 16th, 2009:

5% of \$25,000 from February = \$1,250

Mar 20th payment of \$50,000 pays for remainder of the \$25,000 owed from February and pays \$25,000 of the amount due from March which leaves \$50,000 owed from March.

Apr 16th, 2009:

5% of \$50,000 from March = \$2,500

Total Late Payment Penalty before Filing Due Date = \$6,275

Penalty after Filing Due Date:

Tax Balance Unpaid = \$50,000

Maximum Penalty Threshold = \$25 + 25% of \$200,000 = \$50,025

Late Filing Penalty

May 1st, 2009

$(\$200,000 * 5\%) = \$10,000$

Late Payment Penalty

May 16th, 2009

$(\$50,000 * 5\%) = \$2,500$

Late Filing Penalty

June 1st, 2009

$(\$200,000 * 5\%) = \$10,000$

Late Payment Penalty
June 16th, 2009
 $(\$50,000 * 5\%) = \$2,500$

Late Filing Penalty
July 1st, 2009
 $(\$200,000 * 5\%) = \$10,000$

Filed July 15th, Stop Late Filing Penalty

Late Payment Penalty
July 16th, 2009
 $(\$50,000 * 5\%) = \$2,500$

Late Payment Penalty
Aug 16th, 2009
 $(\$50,000 * 5\%) = \$2,500$

Late Payment Penalty
Sep 16th, 2009
 $(\$50,000 * 5\%) = \$2,500$

Late Payment Penalty
Oct 16th, 2009
 $(\$50,000 * 5\%) = \$2,500$, however reduced to \$1,250 due to threshold

Threshold Met, Stop All Additional Late Penalty

Total Penalty = \$50,025

Authority: O.C.G.A. §§ 48-2-12, 48-2-32, 48-7-54, 48-7-101, 48-7-103, and 48-7-126.